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Supreme Court, U.S.
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No. 04-1238

In the
Supreme Court of the United States

JOSEPH G. GIVENS,
Petitioner,

v.

ALABAMA DEPARTMENT OF CORRECTIONS,
MICHAEL W. HALEY, et al.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

BRIEF IN RESPONSE TO PETITION

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QUESTION PRESENTED

Whether, for Takings Clause purposes, a state prisoner has a constitutionally protected property right in the interest that accrues on work-release earnings deposited into his prison trust account.

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RELEVANT CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS

1. In relevant part, the Fifth Amendment to the United States Constitution provides as follows:

> ... [N]or shall private property be taken for public use, without just compensation.

U.S. Const. amend. V.

2. Section 14-8-6 of the Alabama Code provides as follows:

> **§ 14-8-6. Disposition of earnings.**
>
> The employer of an inmate involved in work release shall pay the inmate's wages directly to the Department of Corrections. The department may adopt regulations concerning the disbursement of any earnings of the inmates involved in work release. The department is authorized to withhold from an inmate's earnings the cost incident to the inmate's confinement as the department shall deem appropriate and reasonable. In no event shall the withheld earnings exceed 40 percent of the earnings of the inmate. After all expenses have been deducted by the department, the remainder of the inmate's earnings shall be credited to his or her account with the department. Upon his or her release all moneys being held by the department shall be paid over to the inmate.

Ala. Code §14-8-6.

3. In relevant part, State of Alabama Department of Corrections Administrative Regulation No. 410, "Work Release: Organization and Function," provides as follows:

> As authorized by statute, thirty-two and one-half percent (32½%)[1] of work releasees' gross earnings will be deducted by the Department of Corrections to assist in defraying the cost of his/her incarceration. The balance will be credited to the work releasee's Prisoners Money on Deposit (PMOD) account. A receipt will be issued showing the amount of deductions and the balance credited to the work releasee's account. When restitution, court costs, or attorney fees have been ordered by the sentencing judge as indicated on the sentencing transcript, the work release participant may be required to make incremental payments towards the sum so ordered. Child support may also be paid if ordered by the court.

State of Alabama Department of Corrections, Admin. Reg. No. 410, §VII.B. (Sept. 2, 1997).

4. In relevant part, the Department of Corrections' *Manual of Accounting Procedures* provides as follows:

> It is the position of the Department that inmates are not entitled to receive interest on PMOD accounts. The Department maintains the PMOD accounts as a convenience for the inmates. In doing so, considerable costs are incurred. However, no service fees are imposed to offset any of those costs. Interest earned on the PMOD funds serves to defray at least a portion of the costs.

State of Alabama Department of Corrections, *Manual of Accounting Procedures for Institutions and Community Based Facilities* p. 5-13 (June 2001).

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[1] Since March 2001, the designated percentage has been 40%, in accordance with Ala. Code §14-8-6, *supra*.

STATEMENT OF THE CASE

The Eleventh Circuit's opinion (Pet. App. A) states the case as follows:

> Alabama inmates participating in work release have part of their wages deposited by the state's Department of Corrections (the Department) in bank accounts in their names. Although interest accrues on these accounts, Department policy prohibits inmates from receiving it. Appellant Joseph G. Givens, a former work release participant, filed suit under 42 U.S.C. § 1983, claiming the Department's policy violated both federal and state law. In particular, Givens argued the Department's policy constituted an unlawful taking. ... .
>
> * * *
>
> Alabama statutorily authorizes the Department to adopt regulations and policies establishing a work-release program for persons incarcerated by the state. *See* Ala. Code § 14-8-2. This authority is constrained by several relevant limitations. First, any wages earned by an inmate must be paid directly to the Department. *Id.* § 14-8-6. Second, the Department may withhold part of the wages received, but the withholding cannot exceed a set percentage of the total wages earned. *Id.* Third, the remainder of an inmate's earnings—less any withdrawals made by the inmate during incarceration—must be paid to the inmate upon release. *Id.*
>
> Pursuant to its statutory authority, the Department implemented a work release program. This program is described in Administrative

Regulation No. 410, which provides that, after the Department has withheld its percentage of an inmate's earnings,* the remainder is to be deposited in a Prisoner Money on Deposit (PMOD) account in the inmate's name. Dep't of Corr. Admin. Reg. No. 410, § VII.B (Sept. 2, 1997).

In Alabama, PMOD accounts are administered in accordance with the Department's *Manual of Accounting Procedures for Institutions and Community Based Facilities,* which specifically states that "inmates are not entitled to receive interest on PMOD accounts." ** Ala. Dep't of Corr. Manual of Accounting Procedures for Insts. and Cmty. Based Facilities, ch. 5, at 26.

Givens was incarcerated in Alabama from 1986 until his release in 2002. During this time, he participated in the Department's work-release program. The wages he earned were paid directly to the Department, and, after the Department withheld its percentage, the remainder was deposited in a PMOD account in his name. Upon his release, Givens was paid the amount that had been deposited in his PMOD account less the withdrawals he had made while incarcerated. In accordance with Department policy, Givens did not receive any of the interest that had accrued on his account.

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* At present, the Department is authorized to withhold up to 40 percent of each inmate's earnings. Ala. Code § 14-8-6. Prior to 1992, this percentage was lower.

** The Department uses the interest that accrues on the PMOD accounts to (1) offset the costs of administering the accounts, and (2) fund various recreational activities for the inmates.

> Givens commenced this action against the Department and assorted state officials by filing a complaint in the Northern District of Alabama. Givens alleged the Department's refusal to allow him to collect the interest that had accrued on his PMOD account (1) constituted a wrongful taking under both federal and state law, and (2) violated § 14-8-35(4) of the Alabama Code, which prohibits the exploitation of inmates. The district court dismissed the takings claims, concluding Givens had no property interest in the interest on his account. The district court also dismissed the claim based on the alleged violation of § 14-8-35(4) on the ground it was simply not "cognizable."

Givens v. Alabama Department of Corr., 381 F.3d 1064, 1065-66 (11th Cir. 2004).

The Eleventh Circuit affirmed. As an initial matter, the court of appeals reiterated the baseline principles (i) that to state a claim under the Takings Clause "a plaintiff must first demonstrate that he possesses a 'property interest' that is constitutionally protected," *id.* at 1066; and (ii) that because the Takings Clause protects, but does not create, private property, "to determine whether a particular property interest is protected [courts] look to 'existing rules or understandings that stem from an independent source such as state law,'" *id.* (quoting *Phillips v. Washington Legal Found.*, 524 U.S. 156, 164 (1998) (internal quotation marks and citations omitted)).

Against that backdrop, the Eleventh Circuit canvassed the decisions that "shape[d its] analysis." *Id.* First, it pointed to this Court's decisions in *Webb's Fabulous Pharmacies v. Beckwith*, 449 U.S. 155 (1980), and *Phillips v. Washington Legal Foundation*, 524 U.S. 156 (1998). In *Webb's*, this Court invalidated on Takings Clause grounds a state statute that appropriated interest

accruing on interpleader funds deposited into the registries of county courts. 449 U.S. at 452. More recently, in *Phillips*, the Court held that for Takings Clause purposes the interest accruing on a lawyer's IOLTA account is the private property of the client. 524 U.S. at 160.

The Eleventh Circuit next turned to the various decisions in the courts of appeals applying *Webb's* and *Phillips*—and the "interest follows principal" rule that underlies them—in the prison setting. 381 F.3d at 1067. The court first noted the Ninth Circuit's holding that "inmates have a protected property interest that accrues on their accounts, even where state statute provides otherwise." *Id.* (citing *Schneider v. California Department of Corr.*, 151 F.3d 1194, 1201 (9th Cir. 1998)).[2] In so concluding, the court below observed, the Ninth Circuit relied on both *Webb's* and *Phillips* and "stressed the pedigree of the common law maxim that interest should follow principal." *Id.* (citing *Schneider*, 151 F.3d at 1199-1201).

As the Eleventh Circuit next reported, the Fourth Circuit has "reached the opposite result." *Id.* (citing *Washlefske v. Winston*, 234 F.3d 179 (4th Cir. 2000), *cert. denied*, 532 U.S. 983 (2001)). In holding that inmates have no protected property right in the interest that accrues on their prison accounts, the Fourth Circuit distinguished *Webb's* and *Phillips* on the ground (as

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[2] As the Eleventh Circuit observed, the Ninth Circuit has clarified that, at least where the interest earned on inmate accounts is used to defray the costs of administering the accounts themselves, the appropriation may be upheld as a valid user fee, and the Fifth Circuit has concluded likewise without addressing the "property interest" issue. 381 F.3d at 1067 n.5 (citing *McIntyre v. Bayer*, 339 F.3d 1097, 1101-02 (9th Cir. 2003), and *Hatfield v. Scott*, 306 F.3d 223, 229 (5th Cir. 2002)).

summarized by the court below) that unlike private investors, "inmates at common law traditionally had no right to earn wages." *Id.* (citing *Washlefske*, 234 F.3d at 184-86). Accordingly, the Fourth Circuit held, any rights that inmates have in their work-release deposits—and, accordingly, any interest accrued on those deposits—extend only so far as state law provides. *Id.*

Turning to the case before it, the Eleventh Circuit observed that "[h]ere, like the Ninth Circuit in *Schneider* and the Fourth Circuit in *Washlefske*, we are presented with a state scheme ... that prohibits inmates from receiving the interest that accrues on their accounts." *Id.* The Eleventh Circuit sided with the Fourth, and against the Ninth, in concluding that, absent some state law creating one, inmates have no constitutionally protected property right in interest that accrues on prison accounts.

The Eleventh Circuit started with the question whether inmates have "a common law property right in the interest that accrues on their accounts." *Id.* at 1068. Citing this Court's decision in *Phillips*, which "list[s] cases applying the common law maxim that interest should follow principal," the Eleventh Circuit acknowledged that "[c]ertainly, non-inmates have such a property right." *Id.* But with respect to Givens' contention that the interest-follows-principal rule should apply equally to inmate accounts, the Eleventh Circuit "disagree[d] for three reasons." *Id.*

First, the court observed, "[a]lthough non-inmates enjoyed an assortment of property rights at common law, inmates did not." *Id.* (citing, *e.g.*, 1 William Blackstone, *Commentaries* *299, and *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 682 (1974)). Second, the Eleventh Circuit said that "the only case directly on point that favors Givens"—the Ninth Circuit's decision in *Schneider*—"frames the common-law inquiry too broadly."

Id. at 1068-69. "Rather than merely asking whether interest followed principal at common law," the Eleventh Circuit concluded, "the Ninth Circuit should have instead analyzed the extent to which inmates at common law enjoyed property rights." *Id.* at 1069. Because the Ninth Circuit "did not do this," the Eleventh Circuit refused to follow *Schneider*. Finally, citing the Fourth Circuit's decision in *Washlefske*, the Eleventh Circuit emphasized that this Court's "holdings in *Phillips* and *Webb's Fabulous Pharmacies*—on which Givens relies—*assumed* that a *complete* property right existed in the principal." *Id.* (emphasis in original). By contrast, the Eleventh Circuit held, because Givens "is not free to receive the amounts deposited in cash, make withdrawals whenever he wants, or spend money without the [Department of Corrections'] approval," he lacks "the full rights of 'possession, control, and disposition' a non-inmate would enjoy." *Id.* (quoting *Phillips*, 524 U.S. at 170).

Having concluded that Givens possessed no common-law property right in the interest that had accrued on his account, the Eleventh Circuit went on to hold that Alabama positive law had not created a protected property interest. The court observed that the only relevant state statute, Ala. Code §14-8-6, is "silent as to what is to become of any interest earned." 381 F.3d at 1070. The relevant regulation, too, the court noted, is "silent regarding interest." *Id.* (citing Dep't of Corr. Admin. Reg. No. 410 (Sept. 2, 1997). Finally, the court emphasized, the Department's accounting manual expressly "provides that inmates are *not* to receive any such interest." *Id.* (citing Ala. Dep't of Corr. Manual of Accounting Procedures for Insts. and Cmty. Based Facilities, ch. 5, at 26) (emphasis added). Accordingly, the Eleventh Circuit held, neither statute nor regulation nor official policy "vests Alabama inmates" with a protected property interest. *Id.*

Because it found that "no recognized property interest is implicated here," the Eleventh Circuit held that there could be no compensable taking. *Id.*

Givens sought panel rehearing, which was denied. *See* Pet. App. B. His petition to this Court followed.

ARGUMENT

The State cannot and does not deny that there are aspects of this case—acknowledged and explained below—that make it a logical candidate for certiorari. In lieu of the usual statement of "reasons for denying the petition," the State offers the following comprehensive description of the legal backdrop against which this case arises.

1. *The Circuit Split.* To begin with, we must acknowledge that there is, as the petition says, "a split in the Circuits on the issue that the Court of Appeals' decision addresses." Pet. at 9. As detailed below, the Fourth, Tenth, and (now) Eleventh have all held—correctly, in our view—that prison inmates have no constitutionally protected property rights in the interest that accrues on their inmate bank accounts. The Ninth Circuit, to the contrary, has held squarely that inmates *do* have a protected property rights in accrued interest. Moreover, since the petition was filed, it has become increasingly clear that the circuit conflict is not merely academic. In one recent case, for instance, a federal magistrate judge "not[ed] ... a split in the circuits as to whether the interest generated from the investment of prisoner wages constitutes private property for purposes of the Takings Clause" and, following the Ninth Circuit's approach to that question, answered in the affirmative. *Young v. Wall*, No. 03-220S, 359 F. Supp. 2d 84, 92 (D.R.I. 2005). On review of the magistrate's decision, the district

court judge noted the same circuit split but agreed instead with what it perceived to be the "more persuasive" decisions of the Fourth and Eleventh Circuits. *Id.*

A description of the split—and the legal landscape more generally—follows:

a. In *Schneider v. California Department of Corrections*, the Ninth Circuit relied on this Court's decisions in *Webb's v. Fabulous Pharmacies*, 449 U.S. 155 (1980), and *Phillips v. Washington Legal Foundation*, 524 U.S. 156 (1998), to hold that prison inmates have a constitutionally protected property right to the interest that accrues on their prison accounts. 151 F.3d 1194, 1199 (9th Cir. 1998). In particular, the Ninth Circuit pointed to this Court's statements in *Phillips* that the "interest follows principal" rule "'has been established under English common law since at least the mid-1700's'" and "'has become firmly embedded in the law of the various States.'" *Id.* at 1200 (quoting *Phillips*, 524 U.S. at 165 & n.5). In the light of the rule's "common law pedigree" and "near-universal endorsement by American courts," the Ninth Circuit had "little doubt" that interest on a prisoner's trust account "is sufficiently fundamental that States may not appropriate it without implicating the Takings Clause." *Id.* at 1201.

b. In *Washlefske v. Winston*, the Fourth Circuit "reach[ed] a different result from that reached by the Ninth Circuit ...." 234 F.3d 179, 186 (4th Cir. 2000), *cert. denied*, 532 U.S. 983 (2001). It concluded that inmates do not have any constitutionally protected property rights in the *interest* that accrues on work-release earnings in their prison accounts because inmates, unlike free-world investors, do not have unencumbered rights to the underlying *principal* in those accounts. After describing the State of Virginia's inmate work-release programs, the court emphasized that "[a]lthough private citizens

ordinarily have a constitutionally protected property interest in the wages earned from their labor under employment contracts, inmates do not." *Id.* at 184 (internal citations omitted). "Indeed," the Fourth Circuit said, "at common law a convicted felon not only did not have a property right in the product of his work in prison, but he also forfeited all rights to personal property." *Id.* at 185 (citing Blackstone's *Commentaries* and *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 682 (1974)). And because an inmate has no property interest in the work-release deposits in his prison account, the court held, "nor is he entitled to the interest or other income earned from them." *Id.*

Notably, the Fourth Circuit did not believe that *Webb's* or *Phillips* dictated a contrary result. By contrast, the court said, "[t]he holding in *Phillips*, as well as that in *Webb's Fabulous Pharmacies*, *assumes* that the claimants had a traditional private property right in the principal and concludes only that, as an incident to that ownership, the claimants also had a property right in the interest." *Id.* (emphasis in original). The Fourth Circuit faulted the Ninth Circuit's analysis for failing, as an antecedent matter, to "determin[e] who 'owned' the principal and to what extent." *Id.* at 186.

c. The Eleventh Circuit here, whose decision we have described at length, *see supra* at 5-8, likewise rejected the Ninth Circuit's analysis as having "fram[ed] the common-law inquiry too broadly." 381 F.3d at 1068-69. "Rather than merely asking whether interest followed principal at common law," the Eleventh Circuit held, "the Ninth Circuit should have instead analyzed the extent to which inmates at common law enjoyed property rights." *Id.* at 1069. And like the Fourth Circuit, the Eleventh Circuit found this Court's decisions in *Webb's* and *Phillips* to be distinguishable. Echoing the Fourth Circuit's decision,

the Eleventh Circuit observed that "*Phillips* and *Webb's Fabulous Pharmacies*—on which Givens relies—assumed that a complete private property right existed in the principal." *Id.* Because, as a prisoner, Givens had only a "limited property right in the principal" in his account, the Eleventh Circuit concluded that he could not avail himself of the usual interest-follows-principal rule. *See id.*

d. Although not mentioned in the petition, we should point out that the Tenth Circuit, too—albeit in an unpublished opinion and without significant analysis—has weighed in on the question presented. In a decision that pre-dates the Ninth Circuit's decision in *Schneider*, the Tenth Circuit held that a prisoner had "no constitutionally protected property interest in interest earned on funds in his statutory draw or mandatory savings accounts." *Petrick v. Fields*, 103 F.3d 145, 1996 WL 699706, at *1 (10th Cir. Dec. 6, 1996).

e. Finally, we note for the record that several other courts—state and federal alike—while not expressly joining issue on the question presented here, have made statements that would seem to indicate uncertainty as to its proper resolution. *See, e.g., Jeffries v. Tennessee Dep't of Corrections*, 108 S.W.3d 862, 872 n.10 (Tenn. Ct. App. 2002) (citing *Schneider*, distinguishing *Washlefske*, and concluding "that the better reasoned position is that prisoners have a property interest in the funds in their inmate trust accounts"); *Reynolds v. Wagner*, 128 F.3d 166 (3d Cir. 1997) (noting, in context of due process challenge to program under which prisoners were charged nominal fee for health care, that "[i]nmates have a property interest in funds held in prison accounts"); *Hampton v. Hobbs*, 106 F.3d 1281, 1287 (6th Cir. 1997) (noting, in context of due process challenge to PLRA fee provisions, that inmate has "protected property interest

in the funds in his prisoner trust account"); *Campbell v. Miller*, 787 F.2d 217, 222 (7th Cir. 1986) (noting, in passing, that prisoner "has a property interest in the funds on deposit in his prison account").

2. *This Court's Decisions.* In addition to the fact of a circuit split, we must also acknowledge that the split appears to have developed as a result of various courts' divergent interpretations of this Court's own decisions in *Webb's* and *Phillips*. The Ninth Circuit, for its part, apparently believed that *Webb's* and *Phillips* essentially compelled the conclusion that prison inmates have a protected property right in accrued interest. *See Schneider*, 151 F.3d at 1199-1200 (repeatedly citing *Webb's* and *Phillips* to support its decision). By contrast, the Fourth and Eleventh Circuits (correctly in our view) concluded that *Webb's* and *Phillips*—and, particularly, those decisions' reliance on the common-law interest-follows-principal rule—could not be stretched to cover prison inmates, whose property rights in the underlying principal are limited. *See Washlefske*, 234 F.3d at 185; *Givens*, 381 F.3d at 1069. Given the circumstances, this Court may perceive a need to clarify confusion concerning the meaning and scope of *Webb's* and *Phillips*.

3. *Practical Implications.* Finally, we must acknowledge that the question presented here—whether or not state corrections officials may take and use the interest that accrues on inmates' prison accounts—has important practical implications for the States. As an initial matter, our own (admittedly very informal) survey of corrections officials indicates that there are a number of States—including several of the nine western States laboring under the Ninth Circuit's decision in *Schneider*—that, like Alabama, do not pay to inmates the interest that accrues on prison trust accounts but, instead, use

that interest in various ways to defray the costs of incarceration.

Furthermore, the amount of money at stake—at least from the States' perspective—is not insignificant. Public records in Alabama, for instance, reflect that during the last five fiscal years, state prisoners have earned between $8.38 million and $16.51 million per year in work-release salaries. During those same five years, inmates' PMOD accounts have generated between $19,154 and $142,421 in interest annually—which, pursuant to policy, the Department of Corrections has used for prison-administration purposes. *See* Department of Corrections, Combining Statement of Rev., Expend., and Changes in Fund Balance (Sept. 30, 2000-Sept. 30, 2004). Thus, whereas the interest that a particular inmate's trust account generates may be insignificant when viewed in isolation, the interest earned on all accounts, when pooled, provides a meaningful additional funding source for often cash-strapped state prison systems.

4. *Vehicle Issues.* In the event that the Court perceives a need to settle the existing circuit conflict, *see* Sup. Ct. R. 10(a), or to clarify the meaning (or mark the limits) of its own decisions in *Webb's* and *Phillips*, *cf.* Sup. Ct. R. 10(c), we have no reason to believe that this case would not provide an appropriate vehicle for doing so. As an initial matter, we are not aware of (nor have we to this point urged) any jurisdictional obstacles that might preclude review of the merits. Moreover, this case was decided in the trial court and the Eleventh Circuit at an early stage in the proceedings (essentially, on summary judgment) and on a limited record—consisting, at bottom, of (i) various state statutes and regulations; (ii) several Department of Corrections manuals and forms; and (iii) a handful of affidavits. *See* C.A. App. Tab 14 pp.6-80, Tab 15 pp.6-28. Finally, it is worth noting that, in the event

the Court does wish to address the property-interest issue, it will likely need to do so in a case that arises in the current posture—that is, with a court of appeals having concluded that no property interest exists and, on that basis, having finally disposed of the Takings Clause claim. Decisions going the other way (like *Schneider*) typically will have been remanded to the trial court for resolution of the logically subsequent takings and just-compensation issues, and thus will not be final. *See* R. Stern, E. Gressman, et al., *Supreme Court Practice* §4.18, at 258 (8th ed. 2002) (Court ordinarily will not grant certiorari to review non-final federal-court decisions).

5. *Contrary Considerations.* Having outlined the various reasons why certiorari might be appropriate here, we note in closing three considerations that arguably weigh against a grant of certiorari. First, this Court denied the petition in *Washlefske*, which, presumably, presented the same issue. *See* 532 U.S. 983 (2001). Second, an adverse ruling on the property-interest issue may not always result in a loss for a State in the final analysis; at least where, as in some States, interest is used "to pay for the cost of administering" the inmates' accounts themselves, it may be (even assuming the existence of a protected property right) that an appropriation could be upheld as a valid user fee. *Hatfield v. Scott*, 306 F.3d 223, 229 (5th Cir. 2002); *see also Vance v. Barrett*, 345 F.3d 1083, 1089 (9th Cir. 2003) (interest used to defray "expenses incurred in creating and maintaining the inmates' accounts").[3] And finally,

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[3] The record in this case reflects that the Alabama DOC uses the interest that accrues on the PMOD accounts both "to (1) offset the costs of administering the accounts, and [to] (2) fund various recreational activities for the inmates." 381 F.3d at 1065 n.2.

the Eleventh Circuit's decision below is, we respectfully submit, correct on the merits and due to be affirmed.

CONCLUSION

For the foregoing reasons, the State neither opposes nor formally acquiesces in the petition for writ of certiorari. In the event that certiorari is granted, the Court should affirm the Eleventh Circuit's decision.

Respectfully submitted,

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